



## FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

March 9, 2010

Jessie Mainardi

The Sutton Law Firm

✓ o/b/o Shawn Nelson

**REDACTED**

**RE: Advisory Letter  
FPPC No. 08/297; Shawn Nelson**

Dear Mr. Mainardi:

The Fair Political Practices Commission ("Commission") enforces the provisions of the Political Reform Act (the "Act") found in Government Code Section 81000, and following. As you are aware, the Commission received a complaint against your client alleging that your client violated conflict of interest provisions of the Act. These allegations referred to your client's votes regarding a moratorium on new alcohol and entertainment permits for business located within the City of Fullerton's Restaurant Overlay District (ROD) on May 15, 2007, June 5, 2007, and July 17, 2007, while serving as the Mayor of Fullerton.

Under the Act, no public official at any level of state or local government may make, participate in making, or in any way use or attempt to use his or her official position to influence a governmental decision in which the official knows or has reason to know he or she has a disqualifying conflict of interest. (Section 87100.) To determine whether an individual has a disqualifying conflict of interest, the Commission generally employs the following sequenced analysis: (1) is the individual a public official; (2) did the official make, participate in making, or use or attempt to use the official position to influence a governmental decision; (3) what are the official's economic interests, (4) are the official's economic interests directly or indirectly involved in the governmental decision; (5) what is the applicable materiality standard for each economic interest involved; and (6) is it reasonably foreseeable that the governmental decision will have a material financial effect on the official's economic interest.<sup>1</sup> (See Regulation 18700.)

Under Section 87100, a conflict of interest exists when your client, as a public official, make, participate in making, or attempt to use your official position to influence a governmental decision in which you know or have reason to know you have a "financial

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<sup>1</sup> The additional two steps of the analysis - whether the public generally exception applies and whether the individual is legally required to participate in the governmental decision - are inapplicable to this matter.

interest.” Your client has a “financial interest” in a decision, within the meaning of Section 87100, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on any source of income aggregating \$500 or more which your client received within 12 months of the decision. (Section 87103, subdivision (c).) SoCo Holdings is a source of income to Mr. Nelson, thus, he has a financial interest in this business entity.

Section 18705.1(c)(4) delineates the materiality standard for economic interests in business entities. The financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that: the gross revenues for a fiscal year will increase or decrease by an amount of \$20,000 or more; the business entity will incur or avoid additional expenses or reduce or eliminate existing expenses for a fiscal year in the amount of \$5,000 or more; or the decision will result in an increase or decrease in the value of the business entity's assets or liabilities of \$20,000 or more.

The economic interests that we examined included an outstanding loan, made by your client's firm to SoCo Holdings, Inc. SoCo Holdings owns and operates the Continental Room, a bar located within the boundaries of the ROD. The governmental decisions regarding the moratorium on new alcohol and entertainment permits within the ROD, where your client's economic interest was not directly involved, did not appear to create a reasonably foreseeable financial effect on your client's economic interests because the specific provisions of the moratorium temporarily restrict new liquor licenses and place additional restrictions on businesses that offer outdoor dining to their clientele. Since The Continental Room already holds a liquor license, and does not offer outdoor dining, these decisions would not materially effect SoCo Holdings in the manner delineated in section 18705.1(c)(4). The Commission has completed a review of the forgoing allegations and closed this case without finding a violation.

The Commission publishes forms and manuals to facilitate compliance with the provisions of the Act, so if you need forms or manuals, or guidance regarding your obligations, please call the Commission's Technical Assistance Division at 1-866-275-3772. Please also visit our website at [www.fppc.ca.gov](http://www.fppc.ca.gov).

Sincerely,

**REDACTED**

Zachary W. Norton  
Commission Counsel  
Enforcement Division